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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/145,690	09/02/1998	CHARLES J. LONG JR.	97-106CIP	6264

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EXAMINER

HYLTON, ROBIN ANNETTE

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 10/22/2003

32

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/145,690

Applicant(s)

LONG JR., CHARLES J.

Examiner

Robin A. Hylton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,5-12,14,16-20,22 and 25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) See Continuation Sheet is/are rejected.
- 7) ☒ Claim(s) See Continuation Sheet is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

Continuation of Disposition of Claims: Claims rejected are 1, 5,6, 7/1, 9,11,14,17, 19,22 and 25 .

Continuation of Disposition of Claims: Claims objected to are 8/6/1, 10/8/6/1, 12/10/8/6/1, 16/12/10/8/6/1, 18/12/10/8/6/1, 20/18/12/10/8/6/1, 8/6/25, 10/8/6/25, 12/10/8/6/25, 16/12/10/8/6/25, 18/12/10/8/6/25, 20/18/12/10/8/6/25, 7/25 .

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DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claims 1, 5/1, 6/1, 7/1, 25, 5/25, and 6/25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perchepied (US 5,609,263) in view of Sander et al. (US 5,487,481).

With respect to Perchepied, closure top portion **3** has an annular skirt **3a** having an internal screw thread **8**, an inner annular sealing flange **10**, and a tamper indicating ring **20** connected to said skirt by a frangible element **21** having an elevated area of the tamper indicating ring extending toward the depending skirt, said tamper indicating ring having at least one arcuate projection **24** and at least one non-removable member **23** breakably attached to the tamper indicating ring at a weakened area **22a**. The at least one arcuate projection **24** to the left of the slot **22** as seen in fig.2 cooperates with the non-removable member to fracture the weakened area **22a**. The at least one arcuate projection is arcuate in a circumferential direction extending around the tamper indicating ring (fig.1). The uppermost surface of the projection is a locking member. Perchepied does not teach at least one frangible element connected to the depending skirt from an elevated area.

Sander teaches a cap having a tamper indicating ring including an elevated area **22** having at least one frangible element connected to the depending skirt from the elevated area.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of at least one frangible element connected to the depending skirt from an elevated area of Perchepied. Providing additional frangible bridges between the tamper indicating ring and the cap skirt provides more stability of the engagement therebetween upon push-on application to a container neck (see col. 3, lines 1-5 of Sander).

3. Claims 11/1, 11/25, 14/11/1, and 14/11/25 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claims 1 and 25 above, and further in view of Montgomery (US 5,379,910).

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Perchepied as modified teaches the claimed closure (and container) except for an annular bead extending from the closure skirt for engaging a sealing groove or a sealing bead on the exterior container neck.

Figures 3-5 of Montgomery teaches a closure comprising an annular bead **40** extending from the closure skirt for contacting at least a portion of the exterior container neck finish. The annular bead is seen as engaging a groove in fig. 4 and a bead **30** in fig. 5.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to apply the teaching of an annular bead extending from the closure skirt for contacting at least a portion of the exterior of the container neck finish, including a sealing groove or a sealing bead, to the modified closure of Perchepied. Doing so would provide an additional seal between the closure and the container.

4. Claims 17/1, 17/25, 19/1, and 19/25 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claims 1 and 25 in view of Repp et al. (US 5,593,055).

Perchepied as modified teaches the claimed closure except for the number of thread leads and the thread leads being segmented.

Repp teaches a container assembly comprising at least seven thread leads and that the threads can be segmented (col. 4, lines 40-46).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified closure of Perchepied with eight or nine thread leads, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art, and to make the threads segmented is an obvious variation of thread arrangement.

5. Claims 1, 5/1, 6/1, 7/1, 25, 5/25, and 6/25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kern (US 4,448,319) in view of Perchepied and Sander.

Kern discloses a(n initially) snap-on, twist-off closure comprising a top portion, an annular depending skirt having an internal thread configuration, and an annular sealing flange depending from the top portion. Kern does not teach a tamper indicating ring.

Perchepied teaches it is known to provide a closure with a tamper indicating ring.

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Sander teaches a cap having a tamper indicating ring including an elevated area **22** having at least one frangible element connected to the depending skirt from the elevated area for more stability of the engagement therebetween upon push-on application to a container neck (see col. 3, lines 1-5 of Sander).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to apply the teaching of a tamper indicating ring to the closure of Kern as taught by Perchepied and Sander. Doing so would ensure the integrity of the container contents prior to use by the ultimate consumer.

6. Claims 9/1 and 9/25 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 or 25 above, and further in view Csaszar (US 4,343,408).

Kern as modified teaches the claimed closure (or container assembly) except for a sealing bead on the annular sealing flange.

Figure 6 of Csaszar teaches an annular sealing flange comprising an annular sealing bead for ensuring firm contact between the closure bead and the interior surface of the container neck (column 8, lines 3-6).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to apply the teaching of an annular sealing flange comprising an annular sealing bead to the modified closure of Kern. Doing so would provide a sealing engagement with the internal surface of the container neck without an engagement between a majority portion of the annular sealing flange and the container neck.

7. Claims 11/1, 11/25, 14/11/1, and 14/11/25 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claims 1, 11/1, 11/25, and further in view of Montgomery.

Kern as modified teaches the claimed closure except for an annular bead extending from the closure skirt for engaging a sealing groove or a sealing bead on the exterior container neck.

Figures 3-5 of Montgomery teaches a closure comprising an annular bead **40** extending from the closure skirt for contacting at least a portion of the exterior container neck finish. The annular bead is seen as engaging a groove in fig.4 and a bead **30** in fig. 5.

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It would have been obvious to one having ordinary skill in the art at the time the invention was made to apply the teaching of an annular bead extending from the closure skirt for contacting at least a portion of the exterior of the container neck finish, including a sealing groove or a sealing bead, to the modified closure of Kern. Doing so would provide an additional seal between the closure and the container.

8. Claims 17/1, 17/25, 19/1, and 19/25 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 or 25 above, and further in view of Repp.

Kern as modified teaches the claimed closure except for the number of thread leads and the thread leads being segmented.

Repp teaches a container assembly comprising at least seven thread leads and that the threads can be segmented (col. 4, lines 43-46).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to further provide the closure of Kern with eight or nine thread leads, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art, and to make the threads segmented is an obvious variation of thread arrangement.

9. Claims 22/1 and 22/25 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claims 1 and 15 above, and further in view of Sander et al. (US 5,568,945).

Perchepped as modified teaches the claimed closure except for the at least one arcuate projection comprising a grooved locking member.

Sander teaches it is known to provide a plurality of relatively flat locking members or a grooved locking member.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the at least one arcuate projection with a grooved locking member since doing so is an obvious matter of design choice of equivalent structure. Providing a grooved locking member grips the locking bead/flange of the container for a more positive engagement therebetween, and ultimately, greater tearing of the band.

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Allowable Subject Matter

10. Claims 8/6/1, 10/8/6/1, 12/10/8/6/1, 16/12/10/8/6/1, 18/12/10/8/6/1, 20/18/12/10/8/6/1, 8/6/25, 10/8/6/25, 12/10/8/6/25, 16/12/10/8/6/25, 18/12/10/8/6/25, 20/18/12/10/8/6/25, 7/25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

11. Applicant's arguments with respect to claim 22 have been considered but are moot in view of the new ground of rejection.

12. Applicant's arguments filed July 24, 2003 have been fully considered but they are not persuasive.

Regarding applicant's remarks to the combination of Perchepied and Sander, the examiner disagrees. Sander is concerned with protecting the bridges of the tamper-indicating bag from premature breakage during application of the cap to a container. Although the cap is screw-threaded onto the container in the final stage of application, it is initially pushed onto the container before screwing occurs. (See column 2, lines 50-53). To this end, the cap is not "fundamentally different from Perchepied" as asserted by applicant.

Additionally, since each closure requires a degree of compressive force to be applied thereto in applying the cap to a container, one of ordinary skill in the art would combine the teaching of Sander with that of Perchepied to provide a cap further having a protect feature against premature fracturing of the tamper-evident band bridges. Thus, a prima facie case of obviousness has been established.

Regarding the combination of Perchepied and Sander and further in view of Montgomery et al., since no further arguments have been presented by applicant, no response by the examiner is required.

Regarding applicant's remarks to the combination of Kern in view of Perchepied and Sander, since similar arguments were made (at page 9-10 of the response), no further comments are made herein. See the previous rebuttal by the examiner.

Conclusion

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

14. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 872-9302 or (703) 872-9303 for after final amendments. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

15. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. _____ is being facsimiled to The U.S. Patent and Trademark Office via fax number (703) 872-_____ on the date shown below.

Typed or printed name of person signing this certificate

Signature _____

Date _____

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (703) 308-1208. The examiner works a flexible schedule, but can normally be reached on Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

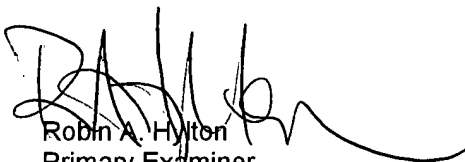
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on (703) 308-2572.

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If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Errica Bembry at (703) 306-4005.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.

RAH
October 17, 2003



Robin A. Hylton
Primary Examiner
GAU 3727